

FCC MAIL SECTION

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 92-40

In the Matter of

ANDREW L. BANAS

Licensee of Station WAPR(AM)
Avon Park, Florida

Order to Show Cause Why the
License for Station WAPR(AM),
Avon Park, Florida, Should
Not Be Revoked

MEMORANDUM OPINION AND ORDER

Adopted: July 9, 1992;

Released: July 17, 1992

By the Chief, Mass Media Bureau:

1. The Commission, by the Chief, Mass Media Bureau, acting pursuant to delegated authority,¹ has before it a "Petition for Special Relief" filed on May 11, 1992, by Andrew L. Banas (Banas) which seeks to assign the license for radio Station WAPR(AM), Avon Park, Florida, to Pearl Lee (Lee). Banas proposes to sell WAPR(AM) to Lee for \$15,000 pursuant to the Commission's minority distress sale policy.²

2. By *Order to Show Cause and Hearing Designation Order*, 7 FCC Rcd 2128 (1992), released March 26, 1992, the Commission ordered Banas to show cause why his license for radio Station WAPR(AM) should not be revoked for allegedly being off the air without Commission authority. On May 11, 1992, Banas filed a "Petition to Suspend Procedural Dates" to allow him time to assign the license consistent with the minority distress sale policy. The Presiding Judge granted Banas' request by *Order*, FCC 92M-584, released May 21, 1992.

3. In order to qualify for distress sale relief, a licensee must show that the hearing has not yet commenced, that there is significant minority ownership in the proposed transferee, and that the station will be sold at a maximum of 75 percent of the fair market value as of the date of designation for hearing. *Lee Broadcasting Corp.*, 76 FCC 2d 462 (1980); *Statement of Policy on Minority Ownership of Broadcast Facilities*, 68 FCC 2d 979 (1978); and *Clarification of Distress Sale Policy*, 44 RR 2d 479 (1978). Thus, the buyer and the seller must each retain an appraiser and submit an appraisal of the fair market value of the station as of the date on which the license was designated for hearing. If the difference between the two appraisals is

more than five percent of the average of the appraisals, the parties must jointly choose and retain a third appraiser. Then, the average of the three appraisals will constitute the station's fair market value. *Grayson Enterprises, Inc.*, 77 FCC 2d 156 (1980), as clarified by *Patrick Henry*, 79 FCC 2d 393 (1980). Finally, the appraisals must contain specific documentation and supporting computations. *Northland Television, Inc.*, 72 FCC 2d 51, 56 (1979), as further clarified in *Grayson*, 77 FCC 2d at 164.

4. The parties have met the threshold criteria for relief by distress sale. First, the hearing has not yet commenced. Second, Banas has established that the proposed assignee of WAPR(AM), Lee, is a minority (Chinese) of Asiatic American extraction. Finally, the parties' methodology for determination of WAPR(AM)'s fair market value and establishment of the distress sale price substantially comports with the third Commission requirement.

5. With respect to the determination of WAPR(AM)'s fair market value, Banas has submitted a station appraisal by Jorgenson Broadcast Brokerage (Jorgenson), an experienced broadcast broker. As stated by Jorgenson, the appraisal of WAPR(AM) is somewhat unusual because the station has been off the air for over a year. Some of the factors that Jorgenson would normally use in an appraisal include cash flow, goodwill, liquidation value, and inherent value of an FCC license. Because WAPR(AM) has been off the air for some time, there was no cash flow or goodwill on which to base the appraisal. Instead, Jorgenson used the liquidation value of the equipment -- \$20,000 -- and the inherent value of an AM license in this market -- \$20,000 -- to arrive at a fair market value of \$40,000 as of March 26, 1992. Jorgenson states that this value is far below the \$100,000 price for which the station sold in 1990.

6. Lee has submitted an appraisal of WAPR(AM) prepared by Kozacko-Horton Company (Kozacko-Horton), an experienced appraisal firm. Kozacko-Horton considered various factors concerning the relevant market and Station WAPR(AM) such as position, potential, demand, competition, recent sales and special conditions. Based on these considerations, Kozacko-Horton arrived at a fair market value of \$38,500 as of March 26, 1992.

7. The proposed sale price of \$15,000 is only 38 percent of the average of WAPR(AM)'s two fair market value appraisals. Thus, the parties have established that WAPR(AM) will be conveyed at a price which comports with the Commission's minority distress sale policy which limits distress sale prices to 75 percent of the fair market value. *Grayson*, 77 FCC 2d at 163.

8. As a final matter, the parties have disclosed all the facts and circumstances regarding the distress sale agreement, including the negotiations relating thereto and the consideration to be exchanged. *KND Corp.*, 48 RR 2d 631, 634 (1980). Banas states that the entire purchase price will go to a creditor of the station and that Banas will receive no consideration from the sale. In addition, Lee has committed to returning WAPR(AM) to the air within 60 days after consummation of the assignment of the station's license. Finally, the assignment application has been processed and Lee has been found to be fully qualified to be a Commission licensee.³ Therefore, the assignment applica-

¹ See *Faith Center, Inc.*, 54 RR 2d 1286, 1287 n.11 (1983), and *Minority Ownership in Broadcasting*, 92 FCC 2d 849, 859 (1982).

² See discussion at para. 3, *infra*.

³ The assignment application (File No. BAL-920511EI) was

tion for Station WAPR(AM) shall be granted, subject to the condition that the contemplated assignment is, in fact, consummated within ninety (90) days of the release date of this *Memorandum Opinion and Order*. If the assignment is not consummated within ninety (90) days, however, this proceeding will return to hearing status and the hearing proceeding will resume in accordance with the *Order to Show Cause and Hearing Designation Order*, 7 FCC Rcd 2128 (1992).

9. Accordingly, IT IS ORDERED that, subject to the condition posed in paragraph 8, above, Banas' "Petition for Special Relief" IS GRANTED; the application for assignment of license of Station WAPR(AM) (File No. BAL-920511EI) IS GRANTED; and this proceeding IS TERMINATED.

FEDERAL COMMUNICATIONS COMMISSION

Roy J. Stewart
Chief, Mass Media Bureau